

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOHN WAGNER,

Petitioner,

v.

Civil Action No. 5:07CV96
(STAMP)

WARDEN, USP-MARION

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Procedural History

On July 30, 2007, the Court received a letter from the petitioner, a federal inmate, in which he asserted that the Bureau of Prisons ("BOP") was improperly computing his sentence. Attached to the petitioner's letter were copies of his attempts to have his sentence "corrected" through the BOP's administrative remedy program. Because the petitioner's letter sought the Court's assistance with the computation of his sentence, the letter and attached documents were construed as a petition for writ of habeas corpus under 28 U.S.C. § 2241.

The case was referred to United States Magistrate Judge John S. Kaull pursuant to Local Rule of Prisoner Litigation Procedure 83.09 for initial review and report and recommendation. On August 7, 2007, Magistrate Judge Kaull directed the petitioner to file an amended petition, within thirty days from the date of the order, on the standard § 2241 forms utilized by this Court so that the

petitioner could more thoroughly present his claim. The petitioner was also advised of the requisite \$5.00 filing fee for filing a habeas corpus action. To date, the petitioner has not filed an amended petition and has not paid the filing fee or requested to proceed as a pauper.

On September 19, 2007, the magistrate judge entered a report recommending that the petitioner's § 2241 petition be dismissed without prejudice for failure to prosecute. The petitioner has not filed objections to the report and recommendation.

II. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld unless they are "clearly erroneous." See Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982); Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because the petitioner did not file objections, this Court reviews the report and recommendation for clear error.

III. Discussion

The magistrate judge found that as of the date of his report and recommendation, the petitioner had not filed an amended petition as directed and had not paid the required filing fee, requested to proceed as a pauper or otherwise explained his reasons

for noncompliance. After a review of the pleadings in this action, this Court finds that the petitioner still has not filed an amended petition as directed and has not paid the filing fee, requested to proceed as a pauper or otherwise explained his reasons for noncompliance. Accordingly, this Court finds that the magistrate judge's report and recommendation is not clearly erroneous because the petitioner has failed to prosecute his case.

III. Conclusion

Because this Court concludes that the magistrate judge's recommendation is without clear error, this Court hereby AFFIRMS and ADOPTS the magistrate judge's report and recommendation in its entirety. Accordingly, the petitioner's petition pursuant to 28 U.S.C. § 2241 is hereby DISMISSED WITHOUT PREJUDICE for failure to prosecute. This civil action is hereby DISMISSED and STRICKEN from the active docket of this Court.

Finally, this Court finds that the petitioner was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action will result in a waiver of appellate rights. Because the petitioner has failed to object, he has waived his right to seek appellate review of this matter. See Wright v. Collins, 766 F.2d 841, 844-45 (4th Cir. 1985).

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the petitioner.

DATED: November 7, 2007

/s/ Frederick P. Stamp, Jr. _____
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE